

Murbro Parking, Inc. and Service Employees International Union, Local 200, AFL-CIO, Case 3-CA-10523

26 July 1981

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On August 30, 1982, Administrative Law Judge James T. Youngblood issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief and the General Counsel filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Murbro Parking, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(b) and re-letter the subsequent paragraphs accordingly:

"(b) Expunge from its records and files any and all references to the unlawful discharge of employee Lawrence Reil and notify him, in writing, that

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We find merit in the General Counsel's cross-exception to the Administrative Law Judge's failure to find that the statement by Supervisor Schioppa to employee Reil that Schioppa had observed Reil "talking union" to other employees and knew that Reil had met with a union business agent constituted an additional instance of unlawfully creating the impression of surveillance, in violation of Sec. 8(a)(1) of the Act.

The complaint identifies Schioppa as having made statements which gave the impression that the union activities of Respondent's employees were under surveillance; Schioppa's statement to Reil in this regard was fully litigated; and, at the close of the hearing, the General Counsel moved to conform the pleadings to the proof during the hearing and said motion was granted.

this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT inform our employees that their union meetings or union activities are under surveillance.

WE WILL NOT engage in surveillance of our employees' union meetings or union activities.

WE WILL NOT discourage membership in Service Employees International Union, Local 200, AFL-CIO, or any other labor organization, by discharging our employees, or in any other manner discriminate against our employees in regard to hire, tenure, or any other term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed to them in Section 7 of the Act.

WE WILL offer Lawrence Reil immediate and full reinstatement to his former position and make him whole for any loss of earnings suffered by reason of his discharge, with interest.

WE WILL expunge from our records and files any and all references to the unlawful discharge of Lawrence Reil, and WE WILL notify him, in writing, that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

MURBRO PARKING, INC.

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge: This matter was heard before me on May 24 and 25 and June 3 and 4, 1982, in Syracuse, New York, pursuant to a complaint which issued on July 31, 1981, alleging that Murbro Parking, Inc. (herein Murbro or Respondent), engaged in certain conduct violative of Section 8(a)(1) of the Act and discharged Lawrence A. Reil in violation of Section 8(a)(3) of the Act. Respondent filed an answer denying the commission of any unfair labor practices and the jurisdiction of the National Labor Relations Board in this matter.

I. THE BUSINESS OF RESPONDENT AND JURISDICTION OF THE BOARD

Respondent is a New York corporation owned equally by two brothers, John and Donald Murphy. Respondent is engaged in the operation of approximately 15 to 16 parking lots and 4 parking garages in the Syracuse, New York, area. It is one of the two largest businesses of its type in Syracuse, the other being Allright Parking. Ninety percent of Respondent's business is from individual customers who drive to the downtown Syracuse area to go to work, attend court hearings, and go shopping. The other 10 percent of the parking spaces are utilized by those who have made monthly group parking arrangements. Respondent also operates an 1,800 space lot at the Syracuse airport, which is used by employees of the airport as well as customers who use the airport, such as passengers who may fly to points located outside the New York area. Respondent admits that the airport parking facility generates about \$1 million in annual revenue. Additionally, Respondent admits that it receives gross revenues in excess of \$500,000 for its business operations in Syracuse. Respondent's product is sold to the ultimate consumer and its operations are designed for the ultimate consumer. Therefore, it may be viewed as being primarily retail in nature and, as it receives more than \$500,000 in gross revenue, it satisfies the Board's monetary jurisdictional test for retail enterprises. See *Margate Bridge Co.*, 247 NLRB 1437 (1980). Additionally, as Respondent annually purchases more than \$10,000 in goods and supplies from enterprises located outside the State of New York, it meets the Board's legal jurisdictional standard. Therefore, it is my conclusion that the Board has legal jurisdiction and it would exercise its discretionary jurisdiction over this employer, and I so find. Therefore, it is my conclusion that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.¹

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Service Employees International Union, Local 200, AFL-CIO (herein the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

As indicated, Murbro operates a series of parking lots in the Syracuse area. It employs parking lot attendants, cashiers, and lot checkers, who earn the minimum wage and receive no benefits. At any one time Respondent may employ between 15 and 22 employees to operate its downtown Syracuse parking facilities. Respondent also operates a parking lot at the municipal airport where it employs an equal number of employees. This parking lot is not involved in this proceeding. Needless to say, Respondent experiences a large turnover in personnel.

¹ The Employer's airport operation alone grosses in excess of \$1 million in revenue, and it is reasonable to assume that at least \$50,000 of this revenue was derived from passengers engaged in interstate travel. Therefore, Respondent's operation is an essential link in interstate commerce. See *Airlines Parking, Inc.*, 196 NLRB 1018 (1972).

Larry Reil was hired in mid-December 1980, and worked continuously until June 12, 1981.² Reil was classified as a lot checker which required him to make the rounds of unattended lots to check the payment boxes.³ Between the hours of 7:30 and 9 a.m., he assisted in parking cars at one of the lots. All the lots checked by Reil were located in the immediate downtown area and he made his rounds on foot. After 9 a.m., he would begin his rounds of the unattended lots. At each lot he would record the license number of the car which occupied each space and the amount of money deposited in the payment box. The first tour of the lots was the longest tour as the lots filled up in the mornings. On his subsequent tours Reil needed only to record the new cars in the lot and the money deposited by the new customers and he was able to finish these rounds more quickly.

Reil was required to be at the State and Washington lot at the beginning of his second round before 12:30 p.m., when the Murphy brothers arrived to collect the moneys in that payment box. Additionally, he had to unlock the chain at the Civic Center lot at 3 p.m., in order to permit the customers there to leave the lot as they came out of work. After dropping the chain at the Civic Center lot, Reil then returned to the Hotel Syracuse garage office at or about 3:05 p.m. He then filled out his lot sheet headings for the following day, filed his completed lot sheets in the bottom drawers of the desk, and punched out at approximately 3:16 p.m. each day.⁴

One morning during the week ending on June 12, Reil initiated a discussion among the employees regarding the benefits of unionization. This took place in the Hotel Syracuse office. Ed Sellars, the maintenance man for the Hotel Syracuse garage, Joe Seaver, the night ticket booth attendant, and Jim King, the cashier, were parties to this conversation. The employees talked about higher pay, health and welfare benefits, a union contract, and the fact that the Allright Parking lot attendants were unionized.⁵

Later that morning in a parking lot, Reil was approached by Bill Giblin, a union steward and an employee of Allright Parking. Giblin asked Reil whether Murbro employees were going to be organized and Reil told him that they had been talking about it. At that point Giblin offered to call the union representative, Jerry Dennis, to talk to Reil. Later Reil met with Dennis. They walked out of the lot and stood between

² Unless otherwise indicated all dates refer to 1981.

³ In the unattended lots the customer would park his car and place his money in a numbered slot in a box which corresponded to the numbered parking space in which his car was parked. It was Reil's job to check the payment box.

⁴ In February, Reil had been advised by Sherry Bixler, the office worker who was responsible for checking the timecards, that he could punch out at 3:16 p.m. if he desired. Although Bixler holds no managerial position and no supervisory authority, she testified that she had told Reil this and that this practice was permitted. Respondent did not deny that Reil had been punching out at 3:16 from February on, and that he continued to be paid for his entire 8-hour workday without any complaint.

⁵ Reil's recollection was that these conversations took place on June 12. The other employees involved in that conversation as well as the testimony of other General Counsel witnesses indicated that these discussions occurred prior to June 12. In any event, all the witnesses indicated that these conversations and other discussions about the Union as well as union meetings all were discussed prior to June 12.

two buildings and discussed the organization of a union at the Murbro Parking lots. Reil reported that he had talked to several employees and they were in favor of the Union. Dennis advised Reil to get the names and locations of those who were interested in the Union and Dennis arranged to meet Reil with the interested employees in the evening at the Back Door Restaurant in Syracuse. Thereafter, Reil advised a number of employees of the meeting with the union representative to be held on June 12.

On June 12, when Reil was making his final tour of duty he observed Peter Schioppa, general manager for Murbro, backing up his truck to the payment box at the Civic Center parking lot, Reil's last stop of the day. Schioppa looked at Reil after he got out of his truck and turned around twice to watch Reil as he walked up the street. According to Reil, it was unusual for Schioppa to be in that lot at that particular time of day. Schioppa admitted this when he was on the stand. It started to rain as Reil checked the lot, finished up his work, and returned to the hotel garage office at a few minutes after 3 p.m. As he normally did he sat at the desk and filled out his lot sheets, and filed his lot sheets in the bottom drawer, and prepared the new sheets for the next workday. Another employee, Ed Sellars, was sitting on the desk and Jim King was standing in the doorway of the office. They were all talking, and it was raining hard outside, when Schioppa, who appeared very angry and upset, came into the office and pointed to Ed Sellars and stated that as he had nothing to do he should punch out. Schioppa then pointed to Reil and said the same thing. Reil was very surprised but, nevertheless, he and Sellars punched out and left the office. King returned to his ticket booth and he was not reprimanded or disciplined in any way over this incident.

That night at the union meeting at the Back Door Restaurant only Dennis, the union representative, and Reil showed up. Sherry Bixler credibly testified that Schioppa had told her that he was aware that there was going to be a union meeting at the Back Door, and he knew that Larry Reil was involved in setting it up; that he, Schioppa, was going to park his truck across the street from the Back Door Restaurant and wait to see who attended the meeting. Bixler related this fact to Jim King and they decided against going to the meeting because they felt that their jobs would be in jeopardy. According to Reil, he was not certain that he was discharged on June 12, but over the weekend he talked to employees King and Dave Gross who informed him that they had heard that he had been fired. Reil checked the timecards at the parking lot and saw that his card along with Sellars was missing from the rack.

On the following Monday morning, June 15, Reil reported to work as usual. Joe Seaver approached him and told him that Schioppa had instructed Seaver to have Reil turn in his keys, that he, Reil, had been fired. Reil went in to see Schioppa in the trailer office and Schioppa told him that he was all through. In response to Reil's question as to why, Schioppa stated, "You were hanging around the office too long for the last two weeks." Reil stated that this was not true and he informed Schioppa that the real reason he was being fired

was because he had tried to organize a union and Schioppa stated, "Well, I observed you talking union with Bill Waddington and Dave Gross. And, I also knew that you met Jerry Dennis in an Allright Parking Lot."

There is no doubt that Reil was a conscientious employee and this record so indicates. Also this record reflects that Respondent had not disciplined Reil in any way and had apparently considered him as a good employee and one on which they could rely.

Discussion and Conclusions

The complaint alleges that Respondent violated Section 8(a)(1) by Schioppa's statement to Bixler that he was going to wait outside the Back Door Restaurant and see what employees attended the union meeting. Additionally, the complaint alleges that the discharge of Larry Reil was because of his union activities in violation of Section 8(a)(3) of the Act.

Respondent denies the statement attributed to Schioppa and contends that Larry Reil was discharged for cause; namely, that he was hanging around the office too much.

In my view, this is a routine, typical garden variety case. Here the employees of this parking lot attempted to organize a union ostensibly to better their situation. They wanted to increase their income which was the minimum wage allowable under Federal law, and to get some benefits as they had none. The employer learned of the organizational activity of its employees and swiftly discharged the leading union adherent and troublemaker. Thus, the union organizational drive is quashed and the employer no longer fears the union for the time being.

This record clearly reflects that Larry Reil was a conscientious employee who performed his duties in a responsible manner and was well thought of by his superiors. He also was instrumental in starting an organizational campaign at Respondent's facility. Although Reil testified that he thought all of this activity occurred on June 12, the date he was discharged, the other employees seemed to believe that some of the activity occurred shortly before his discharge. At the time of the hearing this matter was over a year old. In any event, all the employees testified that the union activities of Reil occurred prior to his discharge and the conversations between Bixler and Schioppa occurred prior to his discharge. There is no doubt that the union activity occurred prior to June 12 and that Schioppa was aware of this fact prior to the discharge of Reil on June 12. Thus, Respondent clearly had knowledge of Reil's union activities, and I so find.

Based on the testimony of Reil as to what Schioppa related to him at the time of his discharge, that he had seen him discussing the Union in the parking lot with two employees, and this was the real reason for his discharge, I conclude that Respondent discharged Reil for his union activities. Additionally, I find that the alleged reason given by Respondent for the discharge was totally pretextual. I find it inconceivable that this Respondent would have discharged a conscientious employee like Reil merely because he was sitting on a desk doing nothing shortly before his workday expired at or around 3:30

p.m. Respondent was aware of the fact that Reil had been clocking out early since February, and it did nothing about this prior to learning of the union organizational campaign. This conduct clearly leads me to believe, and I find, that Respondent's discharge of Reil was based in part on his union activities. Additionally, I find that the statement by Schioppa to Bixler that he was going to watch the union meeting at the Back Door Restaurant to find out who was present was clearly an indication to employees that their union meetings and union activities were under surveillance by Respondent, and was violative of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with Respondent's operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor dispute, burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that Respondent be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent unlawfully discharged its employee Lawrence Reil, I shall order that Respondent offer reinstatement to Lawrence Reil and make him whole for any loss of earnings he may have suffered as a result of the unlawful discrimination in a manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977)⁶

Upon the foregoing findings of fact and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Murbro Parking, Inc., Respondent herein, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees International Union, Local 200, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By informing its employees that their union meetings are under surveillance, Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

4. By discriminatorily discharging its employees because of their union activities, Respondent has discouraged membership in the Union in violation of Section 8(a)(1) and (3) of the Act.

The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁷

The Respondent, Murbro Parking, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Informing its employees that Respondent has their union meetings or activities under surveillance.

(b) Engaging in surveillance of its employees' union meetings or union activities.

(c) Discouraging membership in Service Employees International Union, Local 200, AFL-CIO, or any other labor organization, by discharging employees, or in any manner discriminating against its employees in regard to hire, tenure, or other terms or conditions of employment.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer Lawrence Reil immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings suffered by reason of his discharge in the manner set forth in the section herein entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right of reinstatement on the terms of this Order.

(c) Post at its various parking lots in and around Syracuse, New York, where its employees customarily work copies of the attached notice marked "Appendix."⁸ Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent's representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

⁸ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁶ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).